FIFTH ANNUAL MEETING

OF THE

AMERICAN SOCIETY OF INTERNATIONAL LAW

NEW WILLARD HOTEL, WASHINGTON, D. C.,

April 27–29, 1911

FIRST SESSION

THURSDAY, APRIL 27, 1911, 8 O'CLOCK P. M.

The President, Honorable ELIHU ROOT, called the meeting to order, and delivered the following address:

Gentlemen of the Society, and Ladies: It is with great pleasure that the management of the American Society of International Law welcome you to this Fifth Annual Meeting, and that we are able to report to the members and friends of the Society the continued prosperity of the organization, and increasing interest in its objects and in its work.

I think there has been no letting down whatever in the willingness of the gentlemen who have been interested in the enterprise, and who are qualified to carry it on by their contributions of thought and of industry and that there has been no diminution whatever in their attitude of devotion to the work which they have undertaken.

The year has not been without great interest in international affairs. There has been great activity in many directions. I shall not undertake to give any detailed statement of what has happened; you can find it all in the record of current events in the JOURNAL

of the Society. But it is worth while to note especially the meeting of the Fourth Pan-American Conference at Buenos Aires, the meeting of the International Conference at The Hague for the Unification of the Laws relating to Bills of Exchange; the Third International Maritime Conference at Brussels, and, since the last meeting, the receipt of the treaties which were signed at the Second Central American Conference, which had occurred immediately before we met last year but the results of which had not then come to us.

At the second conference, the Central Americans took a further step in their new departure — their attempt to bring about unity among the countries of Central America — by beginning at the bottom and doing a lot of practical things which would tend to bring them together, as distinguished from beginning at the top and making broad and general promises of unity which the practical workings of their affairs prevented them from keeping.

In this second conference they entered into agreements for the unification of money in their countries, for the unification of weights and measures, for the unification of their consular service, so that the same set of consuls would serve for all five countries, and for commercial reciprocity, so that they may gradually become bound together by the bands naturally created by commercial intercourse.

I find reports for the making of eleven new treaties of arbitration by various countries of Europe, Asia and America. In the practical working of the system of arbitration some very interesting events have occurred.

In October last France and Great Britain submitted the Savarkar case to the Hague tribunal.

In August last Russia and Turkey submitted the question relating to interest on the losses to Russian subjects during the Russo-Turkish war of 1877–78. The nations of the near East, not yet fully embarked in the career of constitutional government, find here in the machinery of the Hague tribunal the means of settling a question which has dragged along for all this period of more than thirty years, without the possibility of settlement in any other way.

In October last the Hague tribunal heard and determined the arbitration between Venezuela and the United States known as the

Orinico Steamship Company case, the last of the five questions which Mr. Castro declined to arbitrate with the United States, and which his successor, after his untimely departure, agreed to arbitrate. After the agreement for arbitration, four of the five cases were settled peaceably and satisfactorily. The only one which was not settled was this Orinoco Steamship Company case, in which the award was made, and that award was satisfactory to the United States, and, I think, in the main, satisfactory also to Venezuela.

In September last the Hague tribunal rendered its award in the North Atlantic Coast Fisheries case, and I think brought to an end the controversies of a century between Great Britain and the United States arising from their respective claims to the Newfoundland and Canadian fisheries. That award, which disposed of matters about which feeling had run high and over which great bitterness had been aroused many times, was received with expressions of almost universal satisfaction among the people of both countries concerned.

There have been a number of very interesting and important treaties made during the past year, of special interest to America.

On the 24th of June last the United States and Mexico entered into a special agreement for the arbitration of what is known as the "Chamizal Case," the question relating to the nationality of the land which had been transferred in process of time, by the flow of the Rio Grande River, from one side of the river to the other, and which formerly being Mexican, is now part of the American city of El Paso; the question being whether the transfer was by erosion, so that title passed to the United States, or whether it was by avulsion, so that the land was torn away under such circumstances that the title still remained in Mexico. That has long been a subject of discussion and has caused great embarrassment and trouble to the governments of both countries; and the agreement now is that it be determined by the boundary commissioners upon the part of Mexico and of the United States, calling in a third commissioner, a member of the Canadian High Court of Justice.

About three months ago a conference was held in Washington in which the representatives of Great Britain, Canada, Newfoundland and the United States took part, and at which an agreement was

reached to substitute settlement *inter partes* for the further judicial proceedings provided for by the award of the Hague tribunal in the North Atlantic Coast Fisheries case; so that the first fruits of the judgment in that litigation have been fruits of concord and adjustment in the place of former strife, the fact being that the judicial settlement of fundamental questions has made it possible to proceed to the peaceable adjustment of subsidiary and practical questions that never had been possible before.

In May, 1910, what is commonly spoken of as the Canadian boundary waters treaty, signed January 11, 1909, was ratified at Washington. That treaty, the primary purpose of which is to provide for the use and disposition of the waters of the lakes and rivers that constitute the greater part of the boundary between Canada and the United States, lays down certain rules which are to be followed in awarding the right to use the waters to the people on either side, and establishes a permanent joint commission, vested with jurisdiction to determine the questions which shall arise between the two countries or the citizens of the two countries in regard to these enormously valuable and important rights. The treaty proceeds to vest in the commission jurisdiction to act as a commission of inquiry upon any question between the two countries, on the request of either one; and it further proceeds to vest in the commission jurisdiction to act as a court for the final determination of any questions between the two countries, on the request of both. So that here we have the machinery for the judicial settlement of a vast number of difficult questions, certain to arise in the future, between the people on either side of the border, just exactly as those questions would be settled between two citizens of the same State, or between a citizen of Pennsylvania and a citizen of Ohio. The treaty goes still further, and provides that for injuries done to a citizen on one side of the line by the diversion of water on the other side of the line, the same remedy shall be available as if both had been on the same side of the line.

On the 21st of January of this year an agreement for reciprocity between the United States and Canada was signed, and as to that

perhaps there will be sufficient said without my devoting any time to it now.

On the 21st of February of this year a new treaty between the United States and Japan, superseding the former treaty of 1894, was concluded. This new treaty appears to have disposed of the only question that any one could see on the horizon between the United States and Japan.

The treaty of 1894 contained a provision annexed to the trade and travel clause, that the rights accorded by that clause should not be held to interfere with national legislation regarding police, immigration, or labor, and Japan was desirous of having that provision omitted, being about to put an end to all the commercial treaties which she had made with the Western Powers during the period when she was not entirely free from the extraterritoriality that had been fixed upon her as an Oriental nation. It fortunately happened that three years ago, when there was some question about the immigration of Japanese laborers to this country, Japan and the United States had united in a practical and informal working agreement, under which Japan undertook to withhold passports from her laborers who might seek to come to this country direct; that is, she undertook not to issue any direct passports to laborers, and Congress vested in the President the power to exclude Japanese laborers attempting to enter the country indirectly, that is, through Mexico or Canada, and without passports from their own country. That working agreement was put into effect by a series of carefully devised regulations, and those regulations have proved to be perfectly effective and to have accomplished the purpose desired by both governments. So that it was practicable to omit the clause which I have referred to, from the new treaty, and to act upon the voluntary agreement which both countries were acting under, outside of the treaty. And as I have just said, since the signing of that treaty there seems to be no question even upon the distant horizon between Japan and the United States.

In September last there was signed at The Hague an additional protocol to the Prize Court Convention which obviated a constitu-

tional difficulty that stood in the way, or was considered to stand in the way, of the ratification of that convention by the United States. The Prize Court Convention of the Second Hague Conference provided for an appeal from the highest court of each signatory Power to the international court, with power to review and reverse the decision of the national court. It was thought by many good American lawyers that the treaty-making power of the United States could not confer upon any tribunal the power to review and reverse the Supreme Court of the United States; and, accordingly, upon the presentation of that difficulty to the other Powers, they have generally entered into a protocol providing that any Power entering into this convention may elect to have the jurisdiction of the International Court of Prize exercised, not by way of reviewing and reversing the decision of the national court, but by way of passing on an action for damages for an injury done, as a new and independent proceeding, precisely as such a question could be submitted to arbitration, and precisely as many cases have been submitted to arbitration after they had been decided by the Supreme Court of the United States; the judgment of the Supreme Court still standing as the last and definitive national act, but the International Prize Court taking jurisdiction of the subject-matter anew, and passing upon the question as to whether the nation is right or wrong, or the other nation is wrong or right. This additional protocol has cleared the way, and the Senate has promptly confirmed the Prize Court Convention with the protocol as an integral part of it, and the ratifications have, I suppose, already been deposited.

The only other thing which I wish specially to mention is the very happy beginning on what I hope will be a long and conquering career of our cousin, the American Society for Judicial Settlement of International Disputes, which has enlisted very great interest throughout our country; and if it continues to be managed as it has begun, it will, I am sure, be of very great benefit to the cause in which we are all so much interested.

I am going to ask you to listen for a little while to some rather random observations on the "Function of Private Codification in International Law."